



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF CLUCHER v. ITALY

(Application no. 36268/97)

JUDGMENT

STRASBOURG

17 April 2003

FINAL

24/09/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Clucher v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER, *judges*,

Mrs M. DEL TUFO, *ad hoc judge*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 27 March 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36268/97) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Italian nationals, Mr Pier Luigi Clucher, Mr Gian Guido Clucher and Mrs Loredana Clucher (“the applicants”), on 1 August 1996.

2. The applicants were represented by Mr B. Tempesta, a lawyer practising in Rome. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their successive co-agents, respectively Mr V. Esposito and Mr F. Crisafulli.

3. The applicants complained under Article 1 of Protocol No. 1 that they had been unable to recover possession of their flat within a reasonable time. Invoking Article 6 § 1 of the Convention, they further complained about the length of the eviction proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case. The Government appointed Ms M. del Tufo as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

6. On 4 October 2001 the Court declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1954, 1956 and 1952 respectively and live in Rome.

9. The applicants are the owners of a flat in Rome, which they had let to G.D.

10. In a writ served on the tenant on 19 May 1984, the applicants communicated their intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

11. By a decision of 15 October 1984, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 31 May 1987.

12. On 17 June 1987, the applicants served notice on the tenant requiring her to vacate the premises.

13. On 30 July 1987, they served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 14 September 1987.

14. Between 14 September 1987 and 29 February 2000, the bailiff made thirty attempts to recover possession.

15. Each attempt proved unsuccessful as, under the statutory provisions providing for the suspension or the staggering of evictions, the applicants were not entitled to police assistance in enforcing the order for possession.

16. On 3 July 2000, the applicants recovered possession of their flat.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 AND ARTICLE 6 § 1 OF THE CONVENTION

18. The applicants complained that they had been unable to recover possession of their flat within a reasonable time owing to the lack of police assistance. They alleged a violation of Article 1 of Protocol No. 1 to the Convention, which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

19. The applicants also alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

20. The Court has on several previous occasions decided cases raising similar issues as in the present case and found a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention (see *Immobiliare Saffi*, cited above, §§ 46-66; *Lunari v. Italy*, no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-47).

21. The Court has examined the present case and finds that there are no facts or arguments from the Government, which would lead to any different conclusion in this case. The Court refers to its detailed reasons in the judgments cited above and notes that in this case the applicants had to wait for approximately thirteen years after the first attempt of the bailiff before repossessing the flat.

22. Consequently, there has been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

24. The applicants sought reparation for the pecuniary damage they had sustained, which they put at 78,006,483 Italian lire (ITL) [40,286.99 euros (EUR)], being the loss of rent for the period from 1 January 1994, under the legislation relaxing restrictions on rent levels, to 30 June 2000, and 3,194,764 ITL [1,649.96 EUR] for the costs of executing the possession order.

25. The Government stressed that the applicants had failed to adduce evidence of the pecuniary damage sustained as a result of the alleged violation. As regards the costs incurred in the domestic proceedings, the Government argued that the costs of the proceedings on the merits were not related to the alleged violations and that the costs incurred during the enforcement stage were due only for the period that was regarded as being a disproportionate interference with the applicants’ right of property.

26. The Court considers that the applicants must be awarded compensation for the pecuniary damage resulting from the loss of rent (see *Immobiliare Saffi* cited above, § 79). Having regard to the means of calculation proposed by the applicants, the Court, in the light of the evidence before it and the period concerned, decides to award on an equitable basis EUR 40,000. As regards the costs of the enforcement proceedings, the Court considers that they must be reimbursed in part (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50). Accordingly, it decides to award on an equitable basis EUR 1,500.

The Court awards a total sum of EUR 41,500 for pecuniary damage, that corresponds to EUR 13,833.33 for each applicant.

B. Non-pecuniary damage

27. Each applicant claimed ITL 7,200,000 [EUR 3,718.49] for non-pecuniary damage.

28. The Government stressed that the applicants had failed to adduce evidence of non-pecuniary damage sustained as a result of the alleged violation.

29. The Court considers that the applicants must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. Therefore, the Court decides, on an equitable basis, to award each applicant EUR 3,000 under this head.

C. Costs and expenses

30. The applicants sought reimbursement of their legal costs, which they put at ITL 1,787,040 [922.93 EUR] for their costs and expenses before the Court.

31. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicants and are reasonable as to quantum (*Bottazzi v. Italy*, no. 34884/97, Reports of Judgments and Decisions 1999-V, § 30). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 900 is a reasonable sum and awards each applicant EUR 300 under this head.

D. Default interest

32. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) 13,833.33 EUR (thirteen thousand eight hundred thirty-three euros and thirty-three cents) for pecuniary damage;
 - (ii) 3,000 EUR (three thousand euros) for non-pecuniary damage;

(iii) 300 EUR (three hundred euros) for legal costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President